

## PATENT COOPERATION TREATY

PCT

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

REC'D 28 NOV 2005

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(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 04P110:RC:JM	<b>FOR FURTHER ACTION</b>		See Form PCT/IPEA/416
International application No. <b>PCT/AU2004/001753</b>	International filing date ( <i>day/month/year</i> ) 13 December 2004	Priority date ( <i>day/month/year</i> ) 12 December 2003	
International Patent Classification (IPC) or national classification and IPC <b>Int. Cl. 7 B65D 17/34, 51/18</b>			
Applicant <b>GARDINER, James Lee</b>			

1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 3 sheets, including this cover sheet.

3. This report is also accompanied by ANNEXES, comprising:

a.  (*sent to the applicant and to the International Bureau*) a total of 14 sheets, as follows:

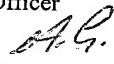
sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).

sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.

b.  (*sent to the International Bureau only*) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or table related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).

4. This report contains indications relating to the following items:

<input checked="" type="checkbox"/>	Box No. I Basis of the report
<input type="checkbox"/>	Box No. II Priority
<input type="checkbox"/>	Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
<input type="checkbox"/>	Box No. IV Lack of unity of invention
<input checked="" type="checkbox"/>	Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
<input type="checkbox"/>	Box No. VI Certain documents cited
<input type="checkbox"/>	Box No. VII Certain defects in the international application
<input type="checkbox"/>	Box No. VIII Certain observations on the international application

Date of submission of the demand 11 July 2005	Date of completion of the report 16 November 2005
Name and mailing address of the IPEA/AU <b>AUSTRALIAN PATENT OFFICE PO BOX 200, WODEN ACT 2606, AUSTRALIA E-mail address: pct@ipaaustralia.gov.au Facsimile No. (02) 6285 3929</b>	Authorized Officer  <b>ADRIANO GIACOBETTI</b> Telephone No. (02) 6283 2579

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/AU2004/001753

**Box No. I Basis of the report**

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- This report is based on translations from the original language into the following language which is the language of a translation furnished for the purposes of:
- international search (under Rules 12.3 and 23.1 (b))
  - publication of the international application (under Rule 12.4)
  - international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the elements of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):
- the international application as originally filed/furnished
- the description:  
 pages 1 as originally filed/furnished  
 pages\* 2-11 received by this Authority on 11 July 2005 with the letter of 11 July 2005  
 pages\* received by this Authority on with the letter of
- the claims:  
 pages as originally filed/furnished  
 pages\* as amended (together with any statement) under Article 19  
 pages\* 12-15 received by this Authority on 11 July 2005 with the letter of 11 July 2005  
 pages\* received by this Authority on with the letter of
- the drawings:  
 pages 1/16-16/16 as originally filed/furnished  
 pages\* received by this Authority on with the letter of  
 pages\* received by this Authority on with the letter of
- a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.
3.  The amendments have resulted in the cancellation of:
- the description, pages
  - the claims, Nos.
  - the drawings, sheets/figs
  - the sequence listing (*specify*):
  - any table(s) related to the sequence listing (*specify*):
4.  This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- the description, pages
  - the claims, Nos.
  - the drawings, sheets/figs
  - the sequence listing (*specify*):
  - any table(s) related to the sequence listing (*specify*):

\* If item 4 applies, some or all of those sheets may be marked "superseded."

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/AU2004/001753

**Box No. V      Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Claims 1-26	YES
	Claims	NO
Inventive step (IS)	Claims 1-26	YES
	Claims	NO
Industrial applicability (IA)	Claims 1-26	YES
	Claims	NO

**2. Citations and explanations (Rule 70.7)**Cited Prior Art Documents

- D1: GB 2331284 A (BAKER) 19 May 1999  
 D2: US 4681238 A (SANCHEZ) 21 July 1987  
 D3: FR 2799442 A1 (BENAROUCH MARCEL) 13 April 2001  
 D4: US 5358136 A (RUBENDALL) 25 October 1994  
 D5: US 2003/0000952 A1 (DYREN) 2 January 2003  
 D6: DE 9005150 U1 (WILDHIRT) 30 August 1990

NOVELTY(N) AND INVENTIVE STEP(IS): Claims 1-26 (YES)

The invention relates to a cap to close an open end of a hollow body of a beverage container. The cap has a main portion and a severable portion to create a dispensing aperture. The cap also has a closure member with a handle which is positioned within the container. After the portion is severed the handle extends through the dispensing aperture to enable the closure member to be moved between closed and open positions.

None of the above documents, taken singly or in obvious combination, disclose all the features of invention as now defined in independent claims 1 and 2. In particular none of the documents disclose a cap wherein the severed portion is moved inwardly into the container and that the closure member is contacted by the severed portion while moving into the container to thereby cause the closure member to move to a position where the handle of the closure member extends through the dispensing aperture.

Therefore the invention of claims 1 and 2, as well as appended claims 3 to 26; is considered to be novel and involve an inventive step over the above documents.

INDUSTRIAL APPLICABILITY(IA): Claims 1-26 (YES)

The invention as defined in claims 1 to 26 meets the requirement of industrial applicability because the cap can be made or used in industry.